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DEC 05 2007

**OFFICE OF PETITIONS**

In re :  
Linh Dinh, Loc Phan, Robert Eury :  
Irina Pomerantseva and Michael Froix : ON PETITION  
Reissue Application No. 10/061,458 :  
Filed: February 1, 2002 :  
Attorney Docket No. S63.2-10389 :

This is in response to the "PETITION UNDER 37 CFR § 1.47(a)," filed May 30, 2007. This petition is properly treated pursuant to 37 CFR 1.183<sup>1</sup>. The \$400 petition fee has been charged to petitioner's Deposit Account, as authorized.

Petitioner requests waiver of the rule (presumably §1.172) that requires that the inventor sign any supplemental declaration in a broadening reissue application.

37 CFR § 1.172 requires that a reissue declaration be made by the inventors, except as otherwise provided (§§ 1.42, 1.43, 1.47), where the scope of the claims of the original patent is being enlarged.

<sup>1</sup> Petitions under 37 CFR 1.47 are only applicable to an original oath or declaration and are not applicable to the reexecution of another oath or declaration by A. In such circumstances, a petition under 37 CFR 1.183 should be considered requesting waiver of the requirement of 37 CFR 1.64 that each of the actual inventors, i.e., inventor A, execute the oath or declaration, particularly where assignee consent is given to the requested correction. See MPEP 201.03.

The above-identified reissue application of patent No. 6,019,789 (Issued February 1, 2000) was filed on February 1, 2002. By decision mailed June 26, 2003, a petition pursuant to 37 CFR 1.47(a) to accept a reissue declaration without the signature of joint inventors Dinh and Eury was granted. A supplemental declaration under 37 CFR 1.175(b)(1) was required by the examiner in the Office action of January 30, 2007.

On May 30, 2007, applicants responded with the instant petition, made timely by an extension of time for response within the second month. The petition includes two supplemental reissue declarations executed in combination by inventors Froix and Pomerantseva on behalf of themselves and on behalf of non-signing inventors Dinh, Phan and Eury. Accompanying the petition is a written consent of assignee and a 3.73(b) statement.

With respect to inventors Dinh and Eury, rule 47 status was already accorded. With respect to inventor Phan, the instant petition includes an adequate showing that a bona fide attempt was made to present the reissue application papers to inventor Phan by certified mail return receipt at his last known address; however, the papers went unclaimed. The petition further includes an adequate showing that, after this unsuccessful attempt, diligent efforts were undertaken to locate inventor Phan. Further, an additional attempt was made to present the reissue application papers to an address discovered through a search for the inventor; however, those application papers were also returned unclaimed.

35 U.S.C. 251, which is directed to reissue, does not address the signature requirements of a declaration in reissue. 37 CFR 1.172 requires that a reissue declaration be made (and signed) by the inventors, except as otherwise provided (§§ 1.42, 1.43, 1.47), where the scope of the claims of the original patent is being enlarged. 37 CFR § 1.175(b)(1), requires that:

"For any error corrected, which is not covered by the oath or declaration submitted under paragraph (a) of this section, applicant must submit a supplemental oath or declaration stating that every such error arose without any deceptive intention on the part of the applicant."

37 CFR 1.175(b)(1), taken in conjunction with § 1.172, requires a supplemental declaration to be signed by all of the inventors.

This is because all oaths or declarations necessary to fulfill the rule requirements in a reissue application are taken together collectively as a single oath or declaration. Thus, each oath and/or declaration must bear the appropriate signature of the inventors.

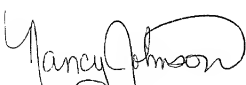
37 CFR 1.183 permits, in an extraordinary situation, waiver of a rule which is not a requirement of the statute, where justice requires such waiver, and applicant has requested a waiver of the requirement that the 37 CFR 1.175(b)(1) supplemental declaration be signed by all of the inventor.

The instant petition is accompanied by an appropriate showing that inventor Phan is unavailable. With respect to inventors Dinh and Eury, 1.47 status was previously accorded. Accompanying the petition is a written consent of assignee and a 3.73(b) statement. Accordingly, the May 30, 2007, supplemental declaration, signed by inventors Froix and Pomerantseva on behalf of themselves and on behalf of non-signing inventors Dinh, Phan and Eury will be accepted as though it was signed by the inventor as required by 37 CFR 1.175(b)(1) taken in conjunction with § 1.172.

The present petition to waive 37 CFR 1.172 is granted.

The application is being forwarded to Technology Center 3774 for further prosecution.

Please direct any questions related to this decision to the undersigned at (571) 272-3219.



Nancy Johnson  
Senior Petitions Attorney  
Office of Petitions